IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

EFA.No. 1 of 1994()

AGAINST THE ORDER DATED 12/10/1993 IN EA.55/93 IN EP.115/92 IN OS.42/1988 of SUB COURT, PAYYANNUR

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APPELLANT/CLAIM PETITIONER:

M/S.SURAJ FINANCE CORPORATION, MADRAS THROUGH POWER OF ATTORNEY HOLDER K.ABOO.

BY ADV. SRI.M.RAMESH CHANDER
SRI.A.KUMAR
SRI.M.S.MANIKANDAN

RESPONDENTS/RESPONDENTS:

(*)1. KANDANCHERY NARAYANAN NAIR, S/O.APPU NAIR, BUSINESS, SREEKANDAPURAM AMSOM, KAITHAPRAM DESOM, P.O.KOOTTUMUKHAM, KANNUR. (DIED. LRS IMPLEADED)

2. VADAKKE KUNNUMPRATH SEBASTIAN, S/O.JOSEPH, BUSINESS, ERUVESSI AMSOM AND DESOM, P.O.CHEMPERI, KANNUR.

ADDL.R3 TO R11 IMPLEADED:

3. NANI, KANDANCHERY NARAYANAN NAIR, SREEKANDAPURAM AMSOM, KAITHAPRAM DESOM, P.O.KOOTTUMUKHAM , KANNUR.

4. RADHAKRISHNAN S/O.KANDANCHERY NARAYANAN NAIR, -DO- -DO-=

5. VINOD, --DO- -DO- -DO-

6. SREELATHA , D/O. -DO- -DO- -DO-

7. SREEREKHA D/O. -DO- -DO- -DO-

8. JOYTHISREE, D/O. -DO- -DO-

9. JEENA , D/O. -DO- -DO- -DO-

10. JISHA, D/O. -DO- -DO-

11. REMYA, -DO- -DO-

(*) ADDL.R3 TO R11 ARE IMPLEADED AS ADDITIONAL RESPONDENTS 3 TO 11 AS THE LEGAL HEIRS OF THE DECEASED FIRST RESPONDENT AS PER ORDER DATED 24.9.2007 IN IA 9471/01.

BY ADV. SRI.M.P.ASHOK KUMAR

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

E.F.A.No.1 of 1994

Dated, this the 4th day of October, 2007

JUDGMENT

The appellant who was a financier through its power of attorney is challenging an order passed by the court below dismissing an application filed by the appellant under Order XXI Rule 58 of Civil Procedure Code in this appeal. First respondent filed O.S.No.42/1988 for realisation of money. In the suit first respondent filed an application to attach a lorry bearing registration No.KRD 5589 owned by the second respondent. Attachment was effected. Immediately thereafter the appellant filed I.A.No.172/1989 under Order XXXVIII Rule 8 of CPC for lifting the attachment. In that petition the court below passed an interim order entrusting the vehicle with the appellant. But no final order was passed in that petition. Order of attachment before judgment was also not made absolute. After the decree the first respondent filed E.P.No.115/1992 for realisation of the amount by sale of the vehicle. Thereafter the appellant filed E.A.No.55/1993 under Order XXI Rule 58 of CPC contending that the appellant is the owner of the vehicle.

2. In the claim petition itself it was averred that the appellant was a financier and on 8.11.1987 the second respondent entered into a hire purchase agreement with the appellant in respect of a lorry and availed a sum of Rs.75,000/-. It was agreed to repay in 30 monthly instalments. It was averred that

as per the agreement the appellant was the owner of the lorry and second respondent was only a hirer of the lorry. It was further averred that the second respondent failed to pay the instalments and an amount of Rs.92,000/- was due to the appellant and hence appellant/claim petitioner is entitled to re-possess the vehicle.

3. Petition was contested by the first respondent/decree holder. It was contended that the custody of the vehicle was given to the appellant as an interim arrangement and appellant was not the owner of the vehicle. It was also contended that the transaction between the appellant and second respondent was a loan transaction.

4. Execution court relying on the decision reported in Sundaram Finance Lt. v. State of Kerala and another (AIR 1966 SC 1178) held that the transaction entered into between the appellant and second respondent was a loan transaction and there was no hire purchase agreement within the meaning of Hire Purchase Act. Executing court had given valid and cogent reasons to dismiss the petition . As observed by the executing court a perusal of Ext.A1 clearly establishes that it was a loan transaction. The executing court found that even accepting the entire case of the appellant it can be seen that he was only a financier who advanced a loan to the owner of the vehicle. That is a finding of fact based on good evidence. I do not find any reason to interfere with that finding of fact.

So the appeal is only to be dismissed.

In the result, appeal is dismissed. Parties are directed to suffer their respective costs.

C.M.P.No.77/1994 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

E.F.A.No.1 of 1994

JUDGMENT

4th September, 2007.